Supreme Court, U.S.
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No.

In the Supreme Court of the United States

ROLAND GIBSON, SR., JESSE GIBSON,
ROLAND GIBSON, JR. and DENNIS GIBSON
PETITIONERS

vs.

THE CITY OF NEW ORLEANS and LLOYD WEST
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA STATE SUPREME COURT

APPENDIX VOLUME I
Appendix A - Appendix D

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APPENDIX A

768 SOUTHERN REPORTER, 2d SERIES

99-1730 (La. 4/11/00)

Roland GIBSON, Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson

The STATE of Louisiana, John St. John and Lloyd West.

No. 99-C-1730.

Supreme Court of Louisiana.

April 11, 2000.

Concurring Opinion of Chief Justice Calogero, April 25, 2000

Opinion Denying Rehearing June 16, 2000.

Innocent person who had, been wrongly convicted brought "on against city and co-defendant in criminal case to recover for false arrest and imprisonment and malicious prosecution. The Civil District Court, Parish of Orleans, No. 93-2517, Carolyn Gill-Jefferson, J., entered judgment in favor of innocent person and family members. City and co-defendant -appealed. The Court of Appeal, Mees, C.J., 731 So-2d 879, affirmed as amended. Certiorari was granted., The Supreme Court, Traylor, J., held that: (1) police had

probable cause for arrest, and (2) indictment and conviction conclusively proved probable cause for arrest and precluded claim against city for false arrest. On rehearing, the Supreme Court also held that the trial court improperly credited the perpetrator's recantation alleging that the police, beat the perpetrator into accusing an innocent. person.

Reversed.

Lemmon, J.-I concurred and assigned reasons.

Calogero, C.J., concurred and assigned reasons.

Mavis Slattery Early, Annabelle H. Walker, Franz L. Ziblich, New Orleans; Counsel for Applicant.

Matthew B. Collins, Jr., Thomas A. Early, Jr., Catrice Ann Johnson, Maurice Anthony Williams, Dianne Jones Marshall, New Orleans, Counsel for Respondent.

Gerald Joseph Nielsen, Counsel for Louisiana Municipal Association, Louisiana Association of Chiefs of Police (Amicus Curiae).

TRAYLOR, Justice.*

In 1968, Plaintiff, Roland Gibson was convicted of first degree murder and received a life sentence. He subsequently filed an application for post conviction relief and, in

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* JOHNSON, J., not on panel. See Rule IV, Part 2, § 3.

1993, was granted a new trial based upon the failure of the District Attorney to furnish *Brady* material. Lloyd West, the sole witness testifying against Gibson, recanted his previous testimony and confession wherein he implicated Gibson as the triggerman in the murder. Gibson, his wife, and two sons filed the instant suit for false arrest and imprisonment, malicious prosecution, and personal injury for Gibson's twenty-five-year incarceration. Without Wests testimony, the District Attorney entered a *nolle prosequi* as to Gibson's indictment on March 31, 1993.

After the civil trial in the instant matter, the trial court found the Police lacked probable cause for Gibson's 1967 arrest and awarded Plaintiffs in excess of eleven million dollars in damages. The trial court apportioned ninety percent of the fault to the City and ten percent to West. The City and Lloyd West appealed. The court of appeal affirmed the trial court, but amended fault to include that attributable to the District Attorney under La. Civ.Code art. 2323. The court of appeal apportioned forty-five percent of the fault to the State, forty-five percent to the City, and ten percent to West. The City sought writs with this court.

We granted writs to determine whether, after being duly convicted of a crime and later released, a party may succeed in a suit for civil damages against the municipality for his arrest, prosecution, and incarceration on, the basis of an alleged wrongful arrest. After a thorough review of the applicable law and the entire record, we answer this question in the negative. We hold that the City cannot be found at fault for Plaintiffs alleged wrongful arrest and prosecution

and, therefore, vacate the contrary findings of the lower courts.

FACTS AND PROCEDURAL HISTORY

Murder Investigation and Trial

On December 30, 1967, at approximately 8:30 p.m. Charles Reinecke, Jr., a New Orleans Yellow Cab driver, was shot and killed in his taxi during an armed robbery. On January 1, 1968, the New Orleans Police (Police) completed an Offense Against Person Case Report detailing that an unknown five-foot, eleven-inch tall white male, twenty-five to thirty years of age, and weighing approximately 160 pounds was wanted in connection with the investigation, "for, questioning only." The Police lifted a fingerprint from a rear cab window and later determined it belonged to Lloyd West.

West, who was already in Police custody for an unrelated crime, initially denied any knowledge of the incident and gave the names of two persons with whom he claimed to have been at the time of the murder. These individuals denied being with West. West named a third individual, Thomas Crayton, who denied being with West at the time of the murder but informed the Police that on December 29, 1967 West and an AWOL[1] Army soldier named "Roland" spent the night at his home. Crayton stated that he left West and "Roland" at his home when he left at noon on December 30, 1967. The Police contacted the Army and confirmed that

[1] AWOL is the military acronym for "absent with-out leave."

as of 7:00 a.m. on December 30, 1967, a soldier named Roland Gibson was reported AWOL from his company in Fort Campbell, Kentucky, and could have been missing for up to forty-eight hours.[2]

West was again interviewed and confronted with the discrepancies in his statements. At this point, he changed his story and claimed he was with his mother at the time of the murder. His mother was summoned to the police station, refused to be his alibi, and told Police that her son was lying. The Police apprised West of his mother's statement and asked him to submit to a polygraph test. Only after the polygraph test indicated deception did West confess his involvement in the murder and implicate Gibson as the triggerman. West repeated this confession on video, in the presence of his mother and uncle. West told Police that the murder weapon, a gun, was under a mattress at Gibson's residence.[3]

On March 80, 1968, the Police obtained a search warrant for Gibson's residence, and served it on Gibson's mother. During the search, the Police found no weapon but remained at the residence and arrested Gibson when he arrived home at 6:20 a.m. intoxicated from a night of drinking. The Police arrested Gibson and took him to the police station. On the afternoon of March 31, 1968, the Police

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[2] The Army confirmed to the Police that Gibson was paid on December 29, 1967 and that he was AWOL as of 7:00 a.m. on the -morning of December 30, 1967. The Army told Police that Gibson had not been seen on base after noon on December 29, 1967 and could have left any time thereafter.

[3] Later, West confessed that the gun was at his home. The gun was never retrieved.

attempted to interrogate Gibson but found Gibson remained intoxicated. On April 1, 1968, Gibson was advised of his rights and questioned by the Police. He repeatedly denied any knowledge of the murder. and claimed to have left Fort-Campbell by bus at 10:00 p.m on the day of the murder. According to this story, Gibson could not have reached New Orleans by the time of the murder. Gibson told Police he arrived in New Orleans at approximately 3:00 am. the day after the murder. In an attempt to corroborate his story, Gibson told Police he was paid on the morning of December 30, 1967 but later produced an Army pay stub showing he was in fact paid on December 29, 1967. Gibson also produced a bus ticket which bore a date that did not substantiate his story. When confronted with conflicting information provided by the Army, Gibson admitted he was paid on December 29, went AWOL, and arrived in New Orleans before the murder took place.

On May 10, 1968, the Police concluded their investigation and turned all evidence and reports over to the District Attorney. The District Attorney did not provide the defense with the supplemental police report which detailed the numerous conflicting stories and alibis West provided the Police before he confessed and implicated Gibson in the murder.

Gibson and West were indicted for first degree murder. At Gibson's criminal trial, West testified that although he participated in the murder, Gibson was the triggerman. For the first time, Gibson, his wife, and his mother related that Gibson was alternately with his mother and wife the entire night of the murder. When asked the reason for their

failure to inform the Police of this alibi during the pendency of the investigation and Gibson's incarceration, the Wife and mother responded that they were never asked to do so. Several police officers testified that Gibson had given a different alibi when he was questioned in 1968. Following trial, the jury found Gibson guilty as charged and sentenced him to life imprisonment at hard labor. Two days later, West pled guilty to first degree murder, was sentenced to life imprisonment, and remains incarcerated.

Throughout the years, West and Gibson have filed appeals and numerous requests for post conviction relief.[4] On June 8, 1985, Gibson drew up and gave West an affidavit to sign that recanted his prior testimony. In the affidavit, West swore that he lied at Gibson's trial and falsely accused Gibson to avoid receiving the death penalty. West signed the affidavit and, since that time, maintains Gibson was neither present during nor his accomplice in the murder.

Hearings on Application for Post Conviction Relief

In 1992, approximately seven years after Gibson effected West's affidavit and twenty-four years after his conviction, Gibson filed the instant application for post conviction relief and, for the first time, revealed West's June 8, 1985 affidavit. In it, Gibson claimed the District Attorney

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[4] Gibson's reported prior appeals include *State ex rel. Gibson v. Henderson*, 258 La. 352, 246 So.2d 199 (1971); *State v. Gibson*, 271 So.2d 868 (La.1973);*State ex rel. Gibson v. Blackburn*, 383 So.2d 794 (La.1980); *State ex rel. Gibson v. Blackburn*, 479 So.2d 360 (La. 1985); *Gibson v. State*, 94-0476 (La.App. 4 Cir. 10/27/94), 644 So.2d 1148.

withheld a supplemental police report containing exculpatory *Brady* material;

The criminal court held three hearings on Gibson's motion for-post conviction relief. West's testimony and the supplemental police, report entered into evidence at the hearings held on October 23, 1992 and December 18,1992. At the third and final hearing held on February 16, 1993, West testified that during their incarceration at Angola Penitentiary, he and Gibson had frequently discussed and eventually concocted a plan to get out of prison. This plan culminated in Gibson's presentation of the affidavit to West for his signature and Gibson's application for post conviction relief. At the hearing, West represented for the first time that a man named George Carter, not Roland Gibson, was the trigger man. West stated he had not previously implicated George Carter because the Police beat him into submission of a statement implicating Gibson.[5]

The presiding judge granted Gibson's application for post-conviction relief, finding that the District Attorney withheld the supplemental Police report, which contained exculpatory *Brady* material in the form of West's numerous conflicting statements to Police and could have denied Gibson a fair trial. The judge ordered a new trial. The

5. The trial court, in its reasons for judgment, mentioned Gibson's contention that West was beaten into submitting the confession wherein he implicated Gibson. The court then repeatedly criticized the Police for believing West, a "convicted felon," over Gibson. The trial court would not have criticized the Police for believing West over Gibson if it found that the Police had forced the confession' Following the trial court's criticism of the Police to its logical conclusion, we must find that the trial court was not convinced that West was beaten.

District Attorney, bereft, of the testimony of its sole witness, West, entered a *nolle prosequi* as to Gibson's indictment on March 31, 1993. Thereafter, Gibson was released from prison.

Civil Trial

On February 12, 1993, the Plaintiffs, Roland Gibson, his wife and two sons, filed the instant civil suit against the State of Louisiana, Lloyd West, the New Orleans District Attorney's Office, and the City [6] seeking damages for false arrest and imprisonment, malicious, prosecution, and personal injury in connection with Roland Gibson's twenty-five-year incarceration. The trial court found the State and District Attorney to be immune under La. Rev. Stat. 42:1441 A and dismissed all claims against them. On February 18, 1998, after a bifurcated trial, the trial court found the Police "did not have reasonable and trustworthy information sufficient to believe Mr. Gibson had committed a crime." The court rendered judgment awarding Plaintiffs a total of $11,674,624, with fault allocated ten percent to West and ninety percent to the City.

The City appealed, asserting the trial court erred in finding no probable cause existed for the arrest of Gibson, in holding the City was liable for damages allegedly occasioned upon Plaintiffs for Gibson's false arrest, conviction, and twenty-five year incarceration, and in allocating ninety percent of the fault to the City. The court of appeal,

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6. Also named were a fictitious Assistant District Attorney and a fictitious insurance company, who are no longer parties to this suit.

amended fault to include comparative fault of the District Attorney regardless of immunity as required by the La. Civ.Code art. 2323.[7] 98-1100 (La.App. 4 Cir. 2/4/99), 731 So.2d 379. The court of appeal found "the trial court erred in holding the Police, rather then [sic] the District Attorney, primarily liable for Gibson's wrongful conviction and incareeration" and re-apportioned forty-five percent of the fault to the State, forty-five percent to the City, and ten percent to West. The court of appeal affirmed the remainder of the trial court judgment. The City sought writs with this court.

STANDARD OF REVIEW

[1-3] The proper standard of review is whether the trial court committed an error of law or made a factual finding which is manifestly erroneous or clearly wrong. *Rosell v. ESCO*, 549 So.2d 840 (La.1989). If the trial court's decision is reasonable in light of the record reviewed in its entirety, this court may not reverse even if we would have weighed the evidence differently. *Id.* Where there is no dispute of fact, the question of probable cause is a question of law. *Crescent City Live-Stock Landing and Slaughter-House Co. v. Butchers Union Slaughter House and Live Stock Landing Co.*, 120 U.S. 141, 7 S.Ct. 472, 30, L.Ed. 614 (1887)

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[7] Art. 2323(a) provides in pertinent part:

> In any action for damages where a person suffers injury, death, or loss, *the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined*, regardless of whether the person is a party to the action or a nonparty, and *regardless of the person's in solvency, ability to pay, immunity by statute.* ...(Emphasis Added)

(citing *Stewart v. Sonneborn,* 98 U.S. 187, 25 L.Ed. 116 (1878)). The facts of this case are not disputed, therefore, this court must determine whether the lower court was manifestly erroneous in finding the Police lacked probable cause to arrest Gibson.

Upon a thorough review of the trial transcript, record, and judgment, we find the trial court's judgment was not reasonable and that it committed manifest error in finding liability on the part of the City for false arrest.

LAW AND DISCUSSION

The main issue presented for review is whether a municipality, through its police department, may be held liable in tort for wrongful arrest after the arrestee has been indicted, prosecuted, found guilty, and convicted of the crime with which he was charged. Implicit in this inquiry is the question of whether the fact that the Plaintiff had been arraigned, indicted, and convicted based upon the criminal court's satisfaction that the probable cause standard was met conclusively proves probable cause existed at the time of the arrest. To examine this issue, we first will embark on an examination of the probable cause standard.

Probable Cause to Arrest

[4, 5] At the outset, we note without hesitation that no police officer should fear that doing his duty in good faith will subject him to liability. An officer satisfies his duty of good faith in making an arrest if the arrest is based on probable cause. Probable cause exists when the facts and cir-

cumstances within the arresting officer's knowledge, and of which he has reasonable and trustworthy information, are sufficient to justify a man of average caution in the belief that the person to be arrested has committed or is committing an offense. B*eck v. Ohio*, 379 U.S. 89, 85, S.Ct. 223, 13 L.Ed.2d 142 (1964); *Miller v. East Baton Rouge Parish Sheriff's Dep't* 511 So.2d 446, 452-53 (La.1987); *State v. Wilson*, 467 So.2d 503 (La.1985).

[6-9] The determination of probable cause, unlike the determination of guilt at trial, does not require the fine resolution of conflicting evidence required at trial, and credibility determinations are seldom crucial in deciding whether available evidence supports a reasonable belief that the person to be arrested has committed a crime. *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); *State v. Rodrigue*, 437 So.2d 830 (La.1983); *State v. Simms*, 571 So.2d 145, 148 (La.1990). Probable cause, as the very name implies, deals with probabilities. *Brinegar v. United States* 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949); *Simms,* 571 So.2d at 148. The probable cause standard recognizes that a degree of uncertainty may exist and that an officer need not have sufficient proof to convict but must have more than a mere suspicion. *State v. Guidry*, 388 So.2d 797 (La.1980); *State v. Lehnen*, 403 So.2d 683, 687 (La.1981); *State v. Herbert* 351 So.2d 434 (La.1977). The facts need not eliminate all possible innocent explanations in order to support a finding of probable cause. *Lehmen*, 403 So.2d at 687; *State v. Phillips*, 347 So.2d 206 (La.1977).

[10-121 While verification may be required to establish probable cause where the source of the information

seems untrustworthy, it is well established that the reputation of the accused, his opportunity to offer explanation, and the need for prompt action are all factors in determining whether unverified information furnishes probable cause. *Miller*, 511 So.2d at 452-53; *Hibernia Nat'l. Bank v. Bolleter*, 390 So.2d 842 (La.1980). However, admissions of criminal activity carry their own indicia of reliability sufficient to support a finding of probable cause. *United States v. Harris*, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971); *State v. Mena*, 399 So.2d 149 (La.1981); *State v. Welsh*, 371 So.2d 1314 (La.1979); *State v. Mena*, 344 So.2d 357 (La.1976). Where a person confesses to a crime, the confession and implication of another is to be deemed highly credible and *more* reliable and trustworthy than previous statements disavowing any knowledge of the murder, because confessions are statements against penal interest. *See Mena,* 399 So.2d at 152.

[13] Applying these precepts, as the trial court, we will determine whether the Police had probable cause to arrest Gibson. First and foremost, probable cause for the arrest and conviction were met to the satisfaction of the criminal court. The civil trial court re-tried the evidence upon which Gibson was convicted and apparently equated the standard of proof of probable cause with proof necessary to prove guilt at trial. However, this was not the duty nor the task before the trial court, and it appears the trial court misapplied that law.

In its reasons for judgment, the trial court asserted five reasons why it found the Police lacked probable cause to arrest Gibson: 1) the Police report detailed that a white

male was "wanted for questioning only," a description which did not fit Gibson; 2) the Police reports did not mention two individuals were suspected of committing the crime; 3) there was no physical evidence against Gibson; 4) the Police believed West, a "convicted felon;" and 5) the Police failed to contact Greyhound to secure an alibi on Gibson's behalf.

[141 After a thorough analysis of these points, we find no merit to any of the reasons for judgment and address each one in turn. First, the fact that the Police report contained the physical description of a white male wanted "for questioning only" does not refute the existence of probable cause for Gibson's arrest in light of other evidence against Gibson. The police report did not specify whether the white male was a suspect in the murder or merely a witness of some kind. Under *State v. Phillips* and *State v. Lehnen,* the Police do not need to eliminate all Possible innocent explanations in order to support a finding of probable cause. For this reason, we find the trial court erred in this finding.

[15] Second, we do not find compelling the trial court's desire for an "explanation in police reports as to why or when police [concluded] that the crime was committed by two individuals rather than one." The Police are not precluded from arresting those whom they reasonably believe to have committed a crime and need not restrict themselves to investigating, questioning or arresting only those individuals they have previously designated as suspects in their reports. As evidence avails itself, the Police are required to act on that evidence and arrest any individual they reasonably suspect of having committed a crime. This is a basic tenet of the probable cause standard.

[16, 17] Third, regarding the trial court's requirement of physical evidence to arrest, clearly, just as an individual be convicted solely on circumstantial evidence, so too can probable cause exist without physical evidence linking an individual to a crime. Under *Beek v. Ohio* and its progeny, the probable cause standard does not require the police to have direct, physical evidence; it only requires that the reasonable and trustworthy facts and circumstances within the arresting officer's knowledge are sufficient to justify a man of average caution in the belief that the arrestee has committed a crime. The trial court erred in requiring physical evidence to prove probable cause for the arrest.

Fourth, the trial court's repeated criticism of the Police for believing West's statements are disingenuous at best because the trial court later found West to be "a highly credible witness." The court cannot in one breath chastise the Police for their reliance on the statements of a "convicted felon" and in the next breath hold in high esteem the same individual's candor. Under *State v. Mena*, the most reliable and honest statement made by West in these entire proceedings is his 1968 confession and implication of Gibson in the murder. In light of all the reasonably reliable facts known to the Police at the time of the arrest,[8] the trial court erred in

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[8] The following facts were known to the Police at the time of the arrest and upon which they based that arrest: West implicated Gibson in his confession which was, as earlier discussed, properly regarded by the Police as highly credible under *State v. Mena*, regardless of West's prior false statements. This alone provided Police sufficient probable cause to effect a valid arrest. Further fortifying the existence of probable cause for the arrest, the Police received information from Mr. Crayton and the Army that corroborated the Police's belief that Gibson was in New Orleans and with West on the day of the murder. Gibson had no valid

finding otherwise.

[18] Lastly, the trial court censured the Police for not contacting Greyhound to substantiate Gibson's alibi. Under *State v. Lehnen* and *State v. Phillips*, the Police need not exhaust all innocent explanations in order for probable cause to exist. Furthermore, Gibson later admitted he was in town at the time of the murder, so the Police's alleged failure is irrelevant. The trial court erred in unjustifiedly placing this burden upon the Police.

Under our analysis, each, of the trial courts' reasons for judgment fail and we find the civil trial court committed manifest error in re-determining the probable cause issue. Plaintiffs failed to prove that no reasonable police officer would have concluded probable cause was present.

[19,20] All information known to the Police at the time of Gibson's arrest was sufficient to justify a man of ordinary caution in believing Gibson had committed a

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(footnote 8 continued)
alibi and those he attempted to provide Police never materialized. The witnesses' statements against Gibson were uncontradicted and further bolstered the Police's reasonable belief that Gibson was involved in the murder, providing probable cause. As previously discussed, the trial court erred in finding West's inconsistent statements and confession negated the existence of probable cause for Gibson's arrest. It is not uncommon for an accused to deny guilt when first questioned by the Police. However, we consider the information provided by West in his confession to be more reliable and trustworthy than his previous conflicting statements because his confession was a statement against penal interest which carried its own indicia of reliability sufficient to support a finding of probable cause.

crime. See n. 8. Furthermore, probable cause was conclusively proven by Gibson's indictment and conviction in the criminal case. It is well settled that an indictment is conclusive proof of probable cause which connotes that probable cause existed for the underlying arrest. *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); *State v. Holmes* 388 So.2d 722, 724 (La.1980); *State v. Howard*, 325 So.2d 812 (La.1976); *State v. Pierre*, 606 So.2d 816, 820 (La.App. 3 Cir.1992); *State v. Clark*, 581 So.2d 747 (La.App. 4 Cir.1991); *State v. Johnson*, 529 So.2d 466 (La.App. 1 Cir. 1988). After indictment or conviction, the defendant can no longer allege lack of probable cause for his arrest. The jurisprudence of this state allows civil damages for false arrest only where there has been insufficient probable cause to sustain the arrest and the party has not been convicted of the crime with which they were charged. *Winn v. City of Alexandria*, 96-0492 (La.App. 3 Cir.1996), 685 So.2d 281; *Miller*, 511 So.2d at 451. Our research has indicated no reported cases where civil liability was found where the plaintiff was found guilty and convicted of the crime for which he later filed such a civil action.

[21,22] Because the standard of proof for the determination of probable cause for a criminal case is more onerous than that for a civil case, it is, therefore, not the province of the civil court to later second-guess or redetermine this finding after the convict has been released, acquitted, or *nolle prosequied*. Absolute certainty of conviction is not the benchmark by which probable cause is determined, and we decline to go so far even where, as in this case, the conviction is later overturned and Plaintiff was not again convicted of the crime. Consequently, we conclude that probable cause existed at the time of Plaintiff's arrest and thereafter,

notwithstanding the fact that plaintiff was granted post conviction relief and his indictment *nolle prosequied.*

Upon a thorough review of the record, we find the Police had probable cause to arrest Plaintiff. The trial court committed manifest error in finding the Police lacked probable. We, likewise, find the court of appeal erred in affirming the trial court. For these reasons, we reverse the trial court and court of appeal finding of fault on the part of the City for Plaintiff's judgment.

CONCLUSION

Based on the totality of the circumstances, the Police had probable cause to believe Gibson had committed first degree murder and were therefore justified in arresting him. The trial court and court of appeal erred in assessing any fault to the city. Therefore, we reverse the portions of rulings of the civil court and court of appeal finding the Police liable false arrest based upon a lack of probable cause.

DECREE

REVERSED.

LEMMON, J., concurs and assigns reasons.

CALOGERO, C.J., concurs and assigns reasons.

LEMMON, J., Concurring.

Although the majority frames the issue in this case as whether a party who has been convicted of a crime may

recover civil damages based on his allegedly wrongful arrest, this decision should not be taken as holding that the conviction precludes recovery even if a wrongful arrest is proved.[1] The critical issue is whether the police had probable cause to arrest plaintiff at the time he was arrested, and not whether the State had sufficient evidence to convict him eight months after his arrest.

The majority correctly determines that there was probable cause to arrest plaintiff at the time of the arrest. However, if probable cause had not existed at the critical time and an investigation subsequent to the arrest had developed evidence to support the eventual conviction, plaintiff would be entitled to some amount of damages for wrongful arrest,[2] irrespective of the fact that he was subsequently convicted.

CALOGERO, C.J., concurring.

Mistakes happen in our less-than-perfect criminal justice system. Occasionally, innocent people serve time. Some people serve their entire sentence, and others, after serving a portion of their sentence, find relief through conclusive proof of innocence, or through a post-conviction proceeding that is simply designed to maintain a fair system, not necessarily to establish innocence. In either event,

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[1] If the conviction was a determinative bar to recovery, it would not be necessary to discuss whether probable cause existed at the time of the arrest.

[2] Of course, the amount of damages in such a case would not be significant, inasmuch as plaintiff's only damages would be for being arrested a few days or weeks earlier than he legally could have been arrested.

proven Innocence or faulty process in securing the conviction, the State, some other public institution, or public officers are sometimes sued for recompense for harm caused by wrongful conduct or negligence on the part of their agents.

Counterbalanced against the law's affording relief in the form of monetary damages arising out of failures in the criminal justice system is a fear that the State will be subject to a flood of litigation and huge judgments threatening to drain its resources for the negligence and misdeeds of criminal justice agents while performing their jobs, as well as the fact that exposure to damage awards my have a chilling effect on vigorous prosecutions. It is for this reason that the legislature has seen fit to grant immunity to the State for the damages caused by district attorneys with-in the course and scope of their official duties. La.Rev.Stat, 42:1441. Related that determination by the legislature, this Court has ruled that a prosecutor entitled to absolute immunity from malicious prosecution suits "when the activities complaint of fall within the scope of the prosecutor's role as an advocate for the state and are intimately associated with the conduct of the criminal process." *Knapper v. Connick,* 96-0434, p. 10 (La. 10/15/96), 681 So.2d 944, 950.[1]

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[1] Likewise, prosecutors sued for alleged civil rights violations under 42 U.S.C. § 1983 have absolute immunity for acts done within the scope of the prosecutors' duties during criminal prosecutions. Imbler v. Pachtman, 424 U.S. 409, 427, 96 S.Ct. 984, 993, 47 L.Ed.2d 128, 142 (1976). However, prosecutors do not have absolute immunity, although they may have qualified immunity, for their misconduct in fabricating evidence and shopping for a favorable expert witness to establish probable cause for arrest because those acts are "administrative" rather than quasi-judicial. Buckley v. Fitzsimmons, 509 U.S. 259, 276, 143 S.Ct. 2606, 2617, 125 L.Ed.2d 209, 228 (103). Furthermore, the United

On the other hand, State agencies or political subdivisions, *e.g.*, municipalities, are not afforded the same immunity. Thus, in the instant case, although the State does not have to pay for bad or substandard district attorney conduct, the City has to pay for its police officers' actions, provided Plaintiff bears his burden of showing that his damages were a consequence of the police officers' negligence or other fault-based conduct.

In 1992, in response to Plaintiff's sixth application for post-conviction relief, Orleans Parish Criminal District Court Judge Calvin Johnson ordered a new trial for Plaintiff, not because of Lloyd West's, the coperpetrator's, seven-year-old recantation,[2] but rather, because of a Brady violation in which Judge Johnson found that the district attorney had withheld exculpatory evidence contained in a supple mental police report. The Judge, in granting Plaintiff relief, did not address the issue of whether the police officers had probable cause to arrest Plaintiff. Subsequently, the district

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(footnote 1 continued)
States Supreme Court has recognized that police officers have qualified immunity from 42 U.S.C. § 1983 liability for wrongful arrests. *Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986). In *Malley*, the Court held that police officers are not immune if a reasonably well-trained officer would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant. *Malley*, 475 U.S. at 345, 106 S.Ct. at 1098, 89 L.Ed.2d at 281.

[2] On January 28, 1968, approximately one month after Charles Reinecke, Jr.'s murder, the police matched a partial fingerprint found on the left rear window of the victim's taxicab with Lloyd West's fingerprint. Subsequently, on March 29, 1968, following a polygraph test that indicated "deception," Lloyd West finally admitted his involvement in Reinecke's murder, but was adamant that Plaintiff was his accomplice and was the triggerman. At Plaintiff's criminal trial, West testified that

attorney entered a *nolle prosequi* because of the problems associated with prosecuting a twenty-five-year-old murder without the benefit of key witness testimony. Plaintiff, therefore, won his freedom.

In 1993, at the civil trial, the result of which 9is now under review, with the State already dismissed from the suit because of its statutory immunity from damages caused by district attorneys within the course and scope of their official duties,[3] the trial judge premised the City's liability on the police officers' lack of probable cause to justify Plaintiff's arrest. It was at this late stage (the civil trial in 1993) that the civil court judge found probable cause lacking for Plaintiffs arrest. Consequently, the issues presented in this case in reviewing the judgment of the civil district court are (1) did the police officers have probable cause to arrest Plaintiff, (2) if not, were they at fault in arresting Plaintiff and, (3) are the officers liable, and the City vicariously liable, for Plaintiff's twenty-five years of incarceration, and was Plaintiff's impairment caused by the assumedly wrongful arrest.

(footnote 2 continued)
Plaintiff was the gunman.

In 1985, Lloyd West, who was (and remains to this day) incarcerated since 1968 after pleading guilty to first degree murder and sentenced to life imprisonment for Reinecke's murder, signed an affidavit produced by Plaintiff wherein West swore that he lied at P/'s trial regarding Plaintiffs involvement in the murder "in order to bypass the electric chair."

[3] On October 27, 1994, the Louisiana Fourth Circuit Court of Appeal affirmed the trial judge's dismissal of the State has State's exception of no cause of action Fourth Circuit ruled that "the District Attorney I s Office is not the State and the State is not liable for the acts of the District Attorney or his employees. See, La.Rev. Stat.Ann. § 42:1441

I concur in the judgment in favor of the City because the law and the evidence do not support the district court's ruling in this civil case. If Plaintiff's arrest by the New Orleans Police Department was without probable cause, then that misdeed or police officer failure may have caused or contributed to Plaintiff's short, legally unsupportable period of confinement following his arrest. Following that brief period–Plaintiff's arrest to the issuance of the indictment–the district attorney alone, with the evidence assembled and during the conduct of the trial, was responsible for Plaintiff's prosecution and conviction.[4] Assuming Plaintiff was wrongfully arrested, and assuming the prosecutor procured Plaintiff's conviction and incarceration by misconduct or negligence on his part, the City would not likely be liable for more than a minimal sum for the short period of confinement prompted but the police officers' arrest without probable cause.

More significantly, however, the evidence in this case does not support the trial judge's determination that the police officers did not, have probable cause to arrest Mr. Gibson~ for the armed, robbery and murder of Charles Reinecke, Jr. Of course, a custodial arrest must be supported by probable cause. *Dunaway v. New York,* 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979). Generally, probable cause for a warrentless arrest exists when the facts and cir-

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(footnote 3 continued)
(A) (West 19990)." Gibson v. State of Louisiana, 94-0476, p. 5 (La.App. 4th Cir. 10/27/94), 644 So.2d 1148, 1150.

4 In this regard, that is, district attorney fault, Criminal District Court Judge Johnson's finding of a Brady violation has relevance.

cumstances known to an arresting officer are sufficient to justify a man of ordinary caution to believe that the person to be arrested has committed a crime. *Beck v. Ohio*, 379 U.S. 89,91, 85 S.Ct. 223, 225, 13 L.Ed.2d 142 (1964); *State v. Scales,* 93-2003, p. 6 (La. 5/22/95), 655 So.2d 1326, 1333; La.Code Crim.Proc.art. 213. This Court has made clear that "the determination of reasonable grounds for an investigatory stop, or probable cause for an arrest, does not rest on the officer's subjective beliefs or attitudes but turns on a completely objective evaluation of all of [the] circumstances known to the officer at the time of his challenged action." *State v. Kalie*, 96-2650, p. 1 (La.9/19/97), 699 So.2d 879 880 (emphasis in original) (*citing Whren v. United States,* 517 U.S. 806, 116, S.Ct. 1769, 135 L.Ed.2d 89 (1996)).

Although there may have been some evidence, gathered during the early part of the investigation, which did not implicate Plaintiff, other evidence, did strongly point to Roland Gibson., On the negative side, the initial police report indicated that the police were looking for an unknown white male, twenty-five to thirty years old, five feet eleven inches tall, with blond hair for questioning. Nevertheless, on the positive side, the police had the evidence of Lloyd West's fingerprint found on the inside of the victim's cab and, West's statement implicating Plaintiff's as the gunman. Additionally, the police were able to corroborate these pieces of evidence with the statement of Thomas Crayton, who explained that he saw West and a friend named "Roland," an alleged AWOL Army soldier, which description fits Plaintiff, together in an apartment shortly before noon on December 30, 1967, just hours before the murder. Thus, the information available to the police at the time they

chose to arrest Plaintiff established probable cause. *Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

Accordingly, I agree with the majority opinions conclusion that the City of New Orleans is not liable for Plaintiff's damages.

ON APPLICATION FOR REHEARING

PER CURIAM**

On application for rehearing, plaintiff raises two substantial issues:

Effect of Conviction on Recovery of Damages for False Arrest

Plaintiff takes issue with this court's statement on original hearing that an indictment is conclusive proof of probable cause to arrest and that the plaintiff is an action based on damages for false arrest cannot allege lack of probable cause for the arrest if the plaintiff had been indicted or convicted.[1] Plaintiff contends that this statement conflicts with the decision in Jones v. Soileau, 448 So.2d 1268

** Johnson, J., not on panel. Rule IV, part § 3.

[1] The statement that "[a]fter indictment or conviction, the defendant can no longer allege lack of probable cause to arrest" is clearly correct in a criminal proceeding in which the accused, after conviction, contends an appeal that the trial court erred in finding probable cause at the preliminary examination. *See State v. Sweeney*, 443 So.2d 522, 531 (La. 1983).

(La.1984)("The crucial determination [in a malicious prosecution action] is whether [the defendant] had an honest and reasonable belief in the guilt, of [the plaintiff] at the time he pressed charges")(emphasis added).

We need not resolve this issue. The Challenged statement, made on original hearing, was not necessary to the decision, because probable cause did exist at the time of arrest, as noted in the majority and concurring opinions on original hearing. The only real question about the existence of probable cause at the time of arrest was whether Lloyd West's statement implicating defendant as triggerman was coerced by the police.

West's Allegedly Coerced Statement

[23] At the time of the arrest, the Police had (1) the statement of Lloyd West implicating plaintiff as a participant with West in the murder and (2) corroboration for West's statement by the fact that West, and plaintiff were seen together nine hours before the murder. If the police had an honest and reasonable belief in the accuracy of the statement, they had probable cause to arrest plaintiff.

West testified in the present civil action that the police coerced him to implicate plaintiff by beating him and forcing him to make the statement, and the trial judge expressly credited West's testimony about the beating. If the police indeed beat West into implicating himself and plaintiff in the robbery and murder, then the police did not have a good faith reasonable belief in the accuracy of West's state-

ment, which they used as a basis for probable cause to arrest plaintiff.

In the 1969 proceeding against West (that culminated in a plea bargain), West was represented by competent counsel, but his attorney did not move to suppress the confession, nor, as far as we can tell from the record, did West tell his attorney or the prosecutor, through his attorney, that he had been beaten into confessing. Furthermore, after West was sentenced, he had numerous opportunities to allege that his confession was compelled by force, yet failed to make such an assertion. For example, in West's 1985 affidavit asserting that he lied when he testified against Gibson in order to avoid a death sentence, West did not claim he was beaten into confessing. In fact, it appears the first time that West claimed he was beaten was four days after this suit for damages was filed by Gibson in 1993. Moreover, when West implicated himself and plaintiff in 1968 in the robbery and murder, the police had physical evidence (fingerprint) of West's involvement, but knew nothing about plaintiff or about any co-perpetrator, except that a person named Roland had been seen with West nine hours before the murder, There was no apparent motivation for the police to coerce West into implicating plaintiff as the triggerman, while there was a good reason for West to identify an accomplice as the triggerman in order to avoid the death penalty. West did avoid the death penalty by implicating plaintiff, but remained silent for more than twenty years about any bating by the police as his motivation for inculpating himself and implicating plaintiff. Significantly, the trial judge who granted post-conviction relief to plaintiff in 1998 did not do so on the basis that West's statement was coerced (although this

evidence was presented to the trial judge), but granted relief because of a *Brady* violation.

On reconsideration, we conclude that the trial judge was manifestly erroneous in crediting West's 1993 recantation of his 1968 statement. Accordingly, the application for rehearing is denied.

APPENDIX B

98-1100 (La.App. 4 Cir. 2/24/99)

Roland GIBSON, Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson

V.

The STATE of Louisiana, John St. John and Lloyd West.

No. 98-CA-1100.

Court of Appeal of Louisiana, Fourth Circuit.

Feb. 24, 1999.

Rehearing Denied May 14, 1999.

Innocent person who had been wrongly convicted brought action against city and co-defendant in criminal case to recover for false arrest and imprisonment and malicious prosecution. The Civil District Court, Parish of Orleans, No. 93-2517, Carolyn Gill-Jefferson, J., entered judgment in favor of innocent person and family members. City and co-defendant appealed. The Court of Appeal, Klees, C.J., held that: (1) the co-defendant was not entitled to absolute immunity of non-litigant/nonparty witnesses; (2) evidence supported conclusion that police lacked probable

cause for arrest; (3) district attorney was responsible for wrongly prosecuting the innocent person; and (4) the appropriate allocation of fault was ten percent for codefendant and 45% each for city and district attorney.

Affirmed as amended.

Catrice A. Johnson, Maurice A. Williams, and Matthew B. Collins, Jr., Dianne J. Marshall, Collins & Marshall, New Orleans, Louisiana, Attorneys for Plaintiffs-Appellees.

Annabelle H. Walker, Deputy City Attorney, Franz L. Zibilich, Chief Deputy City Attorney, Avis Marie Russell, City Attorney, Attorneys for Defendants-Appellants The City of New Orleans and Lloyd West.

Terry E. Ellbritton, Tulane Law School, Appellate Advocacy Program, New Orleans, Louisiana, Attorney for Lloyd West.

Court composed of Chief Judge ROBERT J. KLEES, Judge WILLIAM H. BYRNES III, Judge CHARLES R. JONES.

KLEES, Chief Judge.

The plaintiff, Roland Gibson ("Gibson"), filed suit against the State of Louisiana, Lloyd West, the New Orleans District Attorney's Office, the City of New Orleans and a fic-

titious insurance company seeking damages for false arrest and imprisonment, malicious prosecution and personal injury. The claims against both the State and the District Attorney's Office were dismissed. After a bifurcated jury/judge trial, the court awarded eleven million dollars in damages in favor of plaintiffs Roland Gibson, Sr., Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson. The court held the City to be 90% at fault for the wrongful incarceration of Roland Gibson, with Lloyd West being 10% at fault. Defendants, the City of New Orleans and Lloyd West now appeal. We affirm as amended.

On December 30, 1967, a taxi cab driver was killed during an armed robbery in New Orleans, Louisiana. A fingerprint which was lifted from one of the windows of the cab was traced to Lloyd West ("West"). West admitted to being on the scene of the crime but implicated Gibson as being the triggerman. Thereafter, both West and Gibson were jointly indicted for the murder of the ta)d cab driver.

At the criminal trial, West, Gibson's codefendant, testified again that he had participated in the crime but claimed that Gibson was the one who shot and killed the cab driver. On November 25, 1968, Gibson was convicted by a jury of first degree murder and was sentenced to life imprisonment. On November 27, 1968, West entered into a plea bargain and was sentenced to life imprisonment.

Mr. Gibson:

Past and Future Pain and Suffering	$5,000,000.00
Past Loss Income	$1,038,215.00

Future Loss of Income	$ 636,409.00
Mrs. Jessie Gibson:	
Past and Future Pain and Suffering	$3,000,000.00
Roland Gibson, Jr.:	
Pain and Suffering	$1,000,000.00
Dennis Gibson:	
Pain and Suffering	$1,000,000.00

On June 3, 1985, West signed an affidavit in which he recanted his criminal trial testimony. West stated that he lied and falsely accused Gibson of shooting the cab driver because he was (1) afraid of the electric chair and (2). forced by the New Orleans police to implicate Gibson in the murder. Further, West admitted that George Carter, not Gibson, was the murderer.

In 1992, Gibson filed an application for post-conviction relief on the basis of West's affidavit. Gibson also claimed that the District Attorney had withheld a supplemental police report containing exculpatory evidence which should have been given to Gibson's defense attorney.

This supplemental report, as well as West's affidavit, was entered into evidence at two hearings held on October 23, 1992 and December 18, 1992. Thereafter, the trial judge granted Gibson's motion for post-conviction relief The state

entered a nolle prosequi as to Gibson's indictment on March 31, 1993.

On February 12, 1993, Gibson, his wife and two children, filed this instant civil suit. 'On February 2, 1998, a jury verdict was rendered against West and the court rendered judgment against the City. In its reasons for judgment, the court found that the police did not have probable cause to arrest Gibson for the armed robbery and murder of the cab driver and assessed 10% of fault to West and 90% of fault to the City. The court awarded damages accordingly:

Both West and the City appeal this final judgment.

Before discussing the City's arguments on appeal, we will address two preliminary matters: (1) West's exception of no cause of action and (2) plaintiffs' argument that the criminal transcripts are outside the record and cannot be considered by this court on appeal.

[1] First, West argues that he is entitled to absolute immunity from the judgment that was rendered against him because he was a non-litigant witness in Gibson's criminal trial. See *Spellman v. Desselles*, 596 So.2d 843, 845 (La.App. 4 Cir.1992), *writ denied* 605 So.2d 1080 (La. 1992). We find no merit to this argument. Although we agree with West that non-litigant/non-party witnesses enjoy absolute immunity, we do not find that West is a non-litigant witness. The record reflects that West was jointly indicted with Gibson for the armed robbery and murder of the taxi

cab driver and that he entered a guilty plea and received a life sentence. Accordingly, West's exception of no cause of action is denied.

Second, plaintiffs argue that the City cannot refer to the criminal trial transcripts because they are outside the record. However, the record indicates that on September 7, 1998, this court ordered the entire criminal record and the original police report to supplement the record on appeal. Therefore, we find that the exhibits in question are part of the record before us.

The City argues on appeal that the trial court erred in holding: (1) that the New Orleans police 'officers had no probable cause to arrest Roland Gibson, (2) that the City of New Orleans is liable not only for the plaintiffs' damages for false arrest, but for the damages suffered by the plaintiffs for Roland Gibson's conviction and twenty-five year wrongful incarceration, and (3) that the City of New Orleans was 90% at fault.

Appellate courts may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong". *Rosell v. ESCO*, 549 So.2d 840 (La.1989) *writ denied* 561 So.2d 105 (La. 1990). Where there is conflict in the testimony, reasonable evaluations Of credibility and reasonable inferences of fact should not be disturbed upon review. *Id.* Thus, if the trial court's decision is reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even though the appellate court would have weighed the evidence differently. Further, the allocation of fault is a factual matter lying within the discretion of the trial court, and such determination will not be dis-

disturbed on appeal in the absence of manifest error or clearly wrong. *Maeder v. Williams*, 94-0754 (La.App. 4 Cir. IV30/94) 652 So.2d 1005 *writ denied* 94-3150 (La.3/10/95) 650 So.2d 1177.

The City's first complaint is that the trial court erred in concluding that the New Orleans police did not have probable cause to arrest Gibson for the armed robbery and murder of the taxi cab driver.

Jurisprudence holds that "probable cause to arrest exists when the facts and circumstances known to the officer and of which he has reasonably trustworthy information are sufficient to justify a man of ordinary caution in believing the person to be arrested has committed a crime." *State v. Wilson*, 467 So.2d 503 (La.1985) *cert. denied, Wilson v. Louisiana,* 474 U.S. 911, 106 S.Ct. 281, 88 L.Ed.2d 246 (U.S.La. Oct.15, 1985).

[21 In the sixteen pages of reasons for judgment, the trial court reviewed and evaluated the evidence that was available to the police in March of 1968. The trial court gave the following reasons for finding that the police did not have probable cause to arrest Gibson:

First, the court notes that initially the police were looking for a white male in connection with this crime. This individual was wanted for questioning. Apparently, he was never found. The court notes that the physical description of this individual does not match Mr. Gibson's physical description in any way. Second, there is no explanation in the police reports as to why or when the police made a huge

leap of concluding that the crime was committed by two individuals rather than one.

Specifically, the court notes that initially the police were looking for one individual, a white male. Thereafter, a fingerprint analysis identified one print, Mr. West's. Therefore, the physical evidence just connected only one individual to the crime, Mr. West. Third, there was no physical evidence to connect Mr. Gibson to the crime. Instead, the physical evidence connected Mr. West a convicted felon to the crime.

Mr. West's fingerprint was found inside of the cab and eventually, Mr. West admitted that he had the murder weapon. Fourth, the only evidence that the police had against Mr. Gibson came from Mr. West. Mr. West was a convicted felon who had changed his story on at least three occasions who was physically connected to the crime by a fingerprint and by his own admission was in possession of the murder weapon. Mr. Crayton's testimony was merely that he had seen Mr. West and Roland together hours before the crime was committed, Mr. Crayton saw them together at 12:00 Noon and the murder was committed at 9:00 p.m.

Mr. Gibson had no criminal convictions, yet, the police were still willing to take Mr. West's word that he was a murderer. Finally, there is no indication that the police even contacted Greyhound to see if the company kept records or logs to indicate when the sale of a ticket from Clarksville, Tennessee to New Orleans took place. They did not even check the bus schedule. Instead, they sat back and waited for Mr. Gibson's family to produce a sub which by

that time was three months old. Not surprisingly, the sub could not be located.

Considering all of the evidence that was available to the police in March 1968, the court concludes that they did not have probable cause to arrest Mr. Gibson for the armed robbery and murder of Charles Reinecke.

The City argues that the trial court's reasons for judgment incorrectly describes the information available to the police as of the date Gibson was arrested and charged. We find merit with,only one of the City's error's alleged on appeal.

We agree with the City that in the trial court's reasons for judgment, the trial court misrepresented the information the police gathered from Thomas Crayton. Specifically, the trial court stated that "Mr. Crayton stated initially that r. West was not with him at all on the date in question, December 30, 1967, instead, Mr. Crayton stated that around noon on December 30, 1967, he saw Mr. West with a man named Roland who was AWOL from the Army." However, the Supplement Report states, in pertinent part:

> Crayton also stated that West was positively not with him on 12-30-67. Crayton stated that Lloyd West and a Mend of his known only as "Roland", who was alleged to have been AWOL from the Army at the time. Crayton stated that he left his apartment shortly before noon on 12-30-67, leaving West and Roland in the apartment. When he returned later in the afternoon, both subjects were gone and he did not see West again until New Years Day.

Nonetheless, after reviewing all of the evidence, we do not find this misrepresentation of the facts establishes that the trial court was clearly wrong in concluding that the police did not have probable cause to arrest Gibson. We reiterate that the trial judge is afforded great deference in making factual conclusions. *Rosell,* 549 So.2d 840.

[31 The City's second complaint is that the trial judge erroneously held the City responsible, through its police, for the later events which resulted in Gibson's wrongful conviction and incarceration. The City alleges that it was the District Attorney who made the decision to prosecute Gibson and who failed to turn over the Supplemental Report prepared by police to the defense counsel. We find merit to this argument.

Article V, § 26(B) of the Louisiana Constitution provides that the district attorney controls the administration of criminal prosecutions. Further, LSA-C.Cr.P. art. 61 states that "the district attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute." We have been unable to locate Louisiana jurisprudence to support the City's position that the actions of a prosecuting attorney breaks the chain of causation for later results of an alleged false arrest against a police officer. However, we have reviewed and are persuaded by the case, Barts v. Joyner, cited by the City, to support their position that the District Attorney is liable for Gibson's wrongful conviction and incarceration. 865 F.2d 1187 *cert. denied*, 493 U.S. 831, 110 S.Ct. 101, 107 L.Ed.2d 65 (U.S.Fla. Oct.2, 1989).

In *Barts*, the plaintiff reported that her "father" had been shot by an unknown intruder. Plaintiff later admitted that she had shot the victim when he started kissing her. The police then arrested plaintiff for the murder. Plaintiff was tried and convicted of second degree murder. Plaintiff served eight months of a twenty-five year sentence before her release on appellate bond. She finally was able to tell her attorneys that she shot the victim because he had raped her and she thought he was attempting to do so again. Plaintiff was granted a new trial, where she was acquitted, because of her inability to communicate the rape due to Rape Trauma Syndrome. Plaintiff brought an action against the officers in their capacities as deputy sheriffs and alleged that her detention and transportation to the sheriffs station was an unlawful seizure within the meaning of the fourth amendment. Plaintiff alleged that she was entitled to damages for her criminal trials, conviction, incarceration and resulting aggravation of her Rape Trauma Syndrome. A jury awarded $175,000 against each police officer.

On appeal, the Eleventh Circuit vacated the judgment against defendants in their official capacity and remanded for a new trial. The court held that the intervening acts of the prosecutor, grand jury, judge and jury each break the chain of causation unless it can be shown that these intervening acts were the result of deception or undue pressure by the policemen. Barts, 865 F.2d at 1195. The court stated that the plaintiff failed to produce any evidence that the intervening acts of the prosecutor, grand jury, judge or jury were caused by any deception or undue pressure by the deputy sheriffs. *Id.* at 1196. Further, the court explained that the plaintiff failed to produce evidence "in which a recovery

has been allowed against the arresting police officers for everything, including time served in prison following a conviction, that followed the improper seizure or arrest." *Id* at 1197. The court continued to explain that it would "not create that precedent in the absence of a showing that the police officers deceived the court officials or unduly pressured them or that the court officials themselves acted with malice and the police joined them." Id.

In this instant case, Gibson has failed to present evidence that the police officers unduly pressured the District Attorney to act with malice. We adopt the sound reasoning set forth in the *Barts* case and find that once the police turned over the investigation to the District Attorney, the responsibility of the police had ended. Accordingly, we hold the District Attorney liable for (1) prosecuting Gibson and (2) failing to turn over the exculpatory information to the defense counsel.

[4] The City's third complaint is that the trial court erred in its allocation of ninety percent of the fault for Gibson's alleged false arrest to the City of New Orleans, The City, alleges that even if Gibson was falsely arrested, and even if the police officers were partially at fault, the trial court erred in ascribing 90% of that fault to the police. We find this argument.

In assigning fault, the trial court looked only at the actions of each defendant. In its reasons for judgment, the trial court stated that:

As to Lloyd West, his version of the facts differs significantly from the facts set forth in the Supplemental Police Report and Mr. West testified that prior to the crime he had known Mr. Gibson. They had grown up in the same neighborhood and had "hung" out together.

Mr. West also testified that he was beaten and tortured into confessing that he was involved in the armed robbery.... He gave graphic testimony of being kicked in the chest and groin, choked with a rope around his neck, punched, had a pistol stuck in his mouth and was poked with a cattle prod.

Additionally, he testified that in fact the police brought up Mr. Gibson's name and suggested to Mr. West that Mr. Gibson had committed the crime. Mr. West testified that to save his own life, i.e., to stop the beatings and torture and to avoid the electric chair he implicated Mr. Gibson and agreed to testify against him.

The court found Mr. West to be a very credible witness. He described the beatings and torture in great detail and it was apparent that while testifying that he was actually reliving this experience. Furthermore, the Supplemental police Report indicates that when police were told by Mr. Crayton that he saw Mr. West with an individual "named Roland" who was AWOL, they then learned that Roland Gibson had been reported AWOL, on the day of the murder. Therefore, when Mr. West was questioned, the police knew of Roland Gibson.

> Several years after implicating Mr. Gibson and testifying against him in criminal trial, Mr. West admitted that Mr. Gibson was not involved in the crime. Mr. West now maintains that he and an individual named George Carter committed the crime.The court notes that the physical description that Mr. West gave during the trial of this case of Mr. Carter matches the description of the suspect that the police were initially seeking for questioning as a white male, six feet, one inch tall.
>
> As previously noted, it took Mr. West several years to admit the truth. By then, Mr. Gibson had gone through the ordeal of a trial, been convicted of first degree murder and sentenced to life imprisonment and incarcerated for twenty four years. As to the city's culpability, the court has already found that there was no probable cause to arrest Mr. Gibson.
>
> Considering the law and evidence, the court assesses fault as follows: Lloyd West 10%, the City of New Orleans 90%.

We reiterate that the allocation of fault is a factual finding which a reviewing court does not disturb unless, upon articulated and detailed analysis and reasons, that finding is demonstrated to be clearly wrong. Maeder, 650 So.2d 1177.

However, as stated above, we find the trial court erred in holding the police, rather then the District Attorney, primarily liable for Gibson's wrongful conviction and incar-

ceration. The evidence in the record regarding the District Attorney's actions in the prosecution of this case mandates a finding of fault on the part of the District Attorney. Thus, this court must allocate a percentage of fault to the District Attorney.

Although the Louisiana Supreme Court has recently held in Knapper v. Connick that a prosecutor is entitled to absolute immunity from suit for malicious prosecution, the law still requires a percentage of fault to be allocated to all persons who contribute to the loss. 96--03434 (La.10/15/96) 681 So.2d 944. As provided in La. Civ.Code art. 2323, amended by Act 3 of the 1996 Extraordinary Legislative Session, effective on April 16, 1996:

> A. In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss. (Emphasis Added)

After reviewing the evidence and law we amend the trial

court's assessment of fault as follows: Lloyd West 10%, the City 45% and the District Attorney 45%.

This court will not address the issue of damages for the City has failed to raise this issue on appeal.

For the foregoing reasons, we affirm as amended.

AFFIRMED AS AMENDED.

APPENDIX C

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

ROLAND GIBSON, ET AL,	*	CIVIL ACTION
PLAINTIFFS	*	
	*	
VERSUS	*	CASE NUMBER
	*	93-2517
LLOYD WEST, ET AL,	*	
DEFENDANTS	*	DIVISION "A"
	*	
	*	SECTION 08

* *

FILED:_____, 1998 _____
DEPUTY CLERK

JUDGMENT OF THE COURT

This cause came on for trial in a bifurcated jury/judge trial on January 29, January 30 and February 2, 1998. The Court considering the law and evidence to be in favor of plaintiffs for the reasons contained in the reason for judgment dictated into the record on February 9, 1998.

IT IS ORDERED, ADJUDGED and DECREED that there be Judgment herein in favor of the plaintiffs, Roland Gibson, Sr., Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson and against the defendants, Lloyd West, The City of New Orleans in solido and as follows:

The comparative fault of the defendants, Lloyd West shall be

ten (10%) percent and The City of New Orleans, shall be ninety (90%) percent.

The award shall be as follows:

A) Roland Gibson, Sr.....$6,674,624.00
B) Jessie Gibson $3,000,000.00
C) Roland Gibson, Jr.....$1,000,000.00
D) Dennis Gibson.....$1,000,000.00

IT IS FURTHER ORDERED, ADJUDGED and DECREED that plaintiffs be awarded legal interest from the date of judicial demand until paid and for all costs of these proceedings.

Judgment Read, Rendered and Signed in Open Court this 18th day of February, 1998.

/s/ Carolyn W. Gill-Jefferson
JUDGE

RESPECTFULLY SUBMITTED,

By: Catrice Johnson

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MAURICE A. WILLIAMS, LSBA # 18710
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Please serve Judgment and Notice of Signing of Judgment as follows:

A) The City of New Orleans, Defendant
through its attorney of record
Anabelle Walker, Esq.
Assistant City Attorney
City Hall
1300 Perdido Street - Room 5EO1
New Orleans, Louisiana 70112

B) The City of New Orleans, Defendant
through its attorney of record
Franz L. Zibilich, Esq.
Assistant City Attorney
City Hall
1300 Perdido Street - Room 5EO1
New Orleans, Louisiana 70112

C) Lloyd West, Defendant
through
Lloyd West, Pro Se
Inmate Number 84015
Louisiana Department of Corrections
Police Barracks
265 South Foster Drive
Baton Rouge, Louisiana 70802

D) Roland Gibson, Sr., et al., Plaintiffs
through their attorney of record
Catrice A. Johnson, Esq.
636 North Broad Street
New Orleans, Louisiana 70119

E) Roland Gibson, Sr., et al, Plaintiffs
through their attorney of record
Matthew B. Collins, Jr., Esq.
Dianne J. Marshall, Esq.
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234 Loyola Avenue - Suite 310
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APPENDIX D

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

ROLAND GIBSON, JESSIE GIBSON, ROLAND GIBSON, JR. and DENNIS GIBSON — CASE NO. 93-2517

DIVISION "A"

vs.

THE STATE OF LOUISIANA, THE CITY OF NEW ORLEANS AND LLOYD WEST

Transcript of Judgment and Reasons for Judgment dictated into the record in open court on February 9, 1998, the HONORABLE CAROLYN W. GILL-JEFFERSON, JUDGE presiding.

ANGELA MARIE COLEMAN
OFFICIAL COURT REPORTER

A-P-P-E-A-R-A-N-C-E-S

Catrice Johnson, representing Roland Gibson
Wade Kee, representing City of New Orleans

JUDGMENT AND REASONS FOR JUDGMENT
BY THE COURT:

This is case number 93-2517, Roland Gibson, Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson versus the State of Louisiana, Lloyd West and the City of New Orleans.

This matter came to trial on January 29, 30 and on February 2, 1998. The relevant facts are as follows:

The plaintiff, Roland Gibson has sued the City of New Orleans, Lloyd West, the District Attorney, and an unnamed District Attorney and the State of Louisiana for damages caused by his wrongful conviction and incarceration in 1968 for the murder of a cab driver known as Charles Reinecke. Mr. Reinecke was murdered on December 30, 1967 during an armed robbery.

Mr. Gibson's co-defendant, Lloyd West testified that he and Mr. Gibson committed the robbery. However, Mr. West testified that it was Roland Gibson who shot Mr. Reinecke. Under a plea bargain, Lloyd West was sentenced to a life term at Angola Penitentiary. Roland Gibson was convicted by a jury, of first degree murder and was sentenced to a life term as well.

Some twenty-five years later, Roland Gibson filed a motion for post-conviction relief, accompanied by an affidavit from Lloyd West, in which Mr. West recanted his earlier testimony and said that Mr. Gibson was not involved in the murder.

Roland Gibson also claimed that a supplemental police report contained exculpatory information which was

not provided to him in the previous criminal proceeding. This report as well as Lloyd West's testimony was entered into evidence at two hearings held on October 23, 1992 and December 18, 1992, respectfully in Division 'E' of the Criminal District Court for the Parish of Orleans. Judge Calvin Johnson granted Roland Gibson's motion for post-conviction relief .

Roland Gibson then filed the instant suit in this court. The State of Louisiana was dismissed on exception on December 17, 1993. As to Lloyd West, the case was tried to a jury and as to the City, the court was the trier of fact.

On the evening of February 2, 1998, the jury rendered its verdict against Mr. West. As to the City, the court took the matter under advisement and ordered counsel to return to court today so that the court could dictate its judgment and reasons for judgment in open court.

The first issue before the court is whether the City through the Police Department had probable cause to arrest Mr. Gibson. Pursuant to the jurisprudence, probable cause means that the City, through the Police Department had reasonable and trustworthy information sufficient to believe that Mr. Gibson murdered cab driver, Charles Reinecke on December 30, 1967 during an armed robbery. See Keller v. Schwegmann Giant Supermarket, 604 So2d 1058, 1060 (4th Cir. 1992)

In determining whether there was probable cause to arrest Mr. Gibson, the court must determine what evidence was available to the police at the time of Mr. Gibson's arrest in March 1968.

The evidence available to the police can be adduced from the two police reports. The initial police report states that in connection with the armed robbery and murder of Charles Reinecke, the police wanted to question a white male who was described as having sandy blonde hair, being six feet tall, weighing 165 pounds and being between the ages of twenty five and thirty. The report also contained a description of his clothing.

The supplemental police report states, number one, on January 29, 1968, the police were able to match a partial fingerprint found in the left rear window of Charles Reinecke's cab to defendant, Lloyd West. Mr. West's fingerprints were on file because he had a prior criminal conviction for burglary, assault and battery. When arrested previously Mr. West had a .22 caliber weapon in his possession. This was the same caliber of weapon that killed the cab driver, Charles Reinecke.

On January 29, 1968, Mr. West was brought in for questioning. He denied having any information of the murder and despite the fact that his fingerprint was found inside the cab, he denied that he was even in the cab. He further claimed that at the time of the murder, he had an alibi. He told police that he was with Thomas Crayton, Dorothy Thornton and her husband who he identified as "James".

Number four, the police then questioned Dorothy Thornton and her husband whose name was not James but was Dudley. The Thorntons told police that they only knew Mr. West through Thomas Crayton. They further stated on the date in question, Mr Thornton was not even in New Orleans. Fifth, the police then attempted to locate Mr. West's other alibi witness, Thomas Crayton but because he

had moved, they were not able to locate him.

Number six, due to a manpower shortage and a heavy workload, the investigation was put on hold for two months. Number seven, thereafter, on March 27, 1968, the investigation resumed. The detectives then zeroed in on Mr. West, presumably because one of his fingerprints had been found inside of the cab.

The officers again questioned Mr. West's alibi witness, Dudley and Dorothy Thornton. This time Mr. and Mrs. Thornton gave different statements. Mr. Thornton now stated that he was not out of town on the day of the murder as he had previously claimed. Instead, he stated that on the date in question he was home all night with his wife and Thomas Crayton and he was not with Mr. West. Mr. Thornton told police he did not see Mr. West until the day after the murder, December 31, 1967, when Mr. West and Mr. Crayton came to his apartment to borrow a television. Mrs. Thornton affirmed her husband's statement.

The detectives then located Mr. Crayton and brought him in for questioning. Mr. Crayton stated initially that Mr. West was not with him at all on the date in question, December 30, 1967, instead, Mr. Crayton stated that around Noon on December 30, 1967, he saw Mr. West with a man named Roland who was AWOL from the Army.

The Police investigated and learned that Roland may have been Roland Gibson. Mr. Gibson was in the Army stationed in Fort Campbell, Kentucky. New Orleans was his hometown and he had been reported AWOL on December

30, 1967. On March 29, 1968, the police arrested Mr. West for the murder of Charles Reinecke. Mr. West was given copies of the statements made by the Thorntons and Mr. Crayton. Mr. West then changed his story and said that on the night of the murder, he was at home with his mother.

Mrs. West was then brought into the Detective Bureau and she stated that she could not provide her son, Lloyd with an alibi. Mr. West underwent a polygraph test and the results indicated that he was not telling the truth. The supplemental police report then states that when confronted with the results of the polygraph test Mr. West again changed his story. This time, he admitted that he was involved in the robbery but said that Mr. Roland Gibson had shot the cab driver. Mr. West also told the police that the murder weapon was at Mr. Gibson's home.

The Supplemental Police Report then states that Mr. West repeated his confession on videotape. However, the court notes that at the trial, neither defendant made mention of the existence or the whereabouts of the alleged videotape. In the early morning hours of March 30, 1968, the police obtained a search warrant for Roland Gibson's home and went to the residence to search for the gun and to arrest Mr. Gibson. When Mr. Gibson arrived home, he was intoxicated and he was arrested. However, a search of his residence did not produce a gun.

At the station, Mr. Gibson was belligerent and he was locked up. The police then informed Mr. West that Mr. Gibson denied being involved in the murder and that they had not found the weapon in Mr. Gibson's residence. When

presented with this information, Mr. West again changed his story. He told police that the murder weapon was actually at his residence and he described it in great detail. Purportedly, he then repeated this confession on videotape. Again, no mention of this tape was made at trial.

A search warrant was obtained for Mr. West's residence. At the residence, Mr. West's younger brother, Jerome told police that he had found the gun between his brother Lloyd's mattress and box springs. Jerome stated that after playing with the gun he had left it in the yard. And it was Jerome's description of the gun and Jerome's description of the gun closely matched Lloyd West's description.

Detectives then questioned Mr. Gibson. Mr. Gibson denied any knowledge or involvement in the murder. He said that in December 1967 he was in the Army stationed at Fort Campbell, Kentucky. He stated that he was relieved from duty on December 30, 1967, the date of the murder, at 12:00 Noon. However, military records reported Mr. Gibson AWOL as of 7:00 AM on December 30, 1967.

Mr. Gibson also claimed that two of his fellow soldiers could back up his claim that he did not arrive in New Orleans until 3:00 AM on December 31, 1967. Mr. Gibson claimed that he had been on duty at Fort Campbell with another soldier until December 30, 1967.

Thereafter, Mr. Gibson stated that he was with a second soldier named William Walters until 8:00 PM on December 30, 1967 when he and Walters parted company in Clarksville, Tennessee. Mr. Gibson told police that at

10:00 PM on December 30, 1967, he caught a Greyhound bus in Clarksville and arrived in New Orleans at 3:00 AM on December 31, 1967 which is after Mr. Reinecke's murder.

The police report notes that Mr. Gibson's statement was contrary to statements made by Mr. Crayton and Mr. West in that Mr. Crayton and Mr. West both said. that Mr. Gibson had been with Mr.West on the night of December 29, 1967. However, the court notes that this is incorrect. In fact, Mr. Crayton stated that he saw Mr. West and "Roland" together at 12:00 Noon on December 30, 1967. He did not say that he saw them together on December 29, 1967.

Additionally, Mr. Gibson produced a pay voucher dated December 29, 1967 for the pay period December 1 through 31, 1967. He stated that he received this voucher on December 30, 1967.

Mr. Gibson also stated that he had a stub from his bus ticket at his house and that this would prove that he did not leave Tennessee until December 30, 1967. Based upon this information, the police report states that a call was made to Fort Campbell. As a result of this call the police learned that, number one, both soldiers mentioned by Mr. Gibson had been re-assigned and were then serving in Vietnam.

Army personnel stated that they would attempt to locate these soldiers. Number two, although Mr. Gibson was not reported as AWOL until December 30, 1967 at 7:00 AM he could have actually been AWOL since sometime on December 29, 1967, and three, Mr. Gibson had been paid on December 29, 1967 and not on December 30, 1967.

Finally, the police report notes that Mr. Gibson's family could not locate the bus ticket stub which by that time would have been three months old. Based upon all of the above, the police concluded that they had probable cause to arrest Mr. Gibson for armed robbery and murder.

The court considering all of the evidence presented, specifically the two police reports holds that for the following reasons, the City of New Orleans through the Police Department did not have probable cause to arrest Mr. Gibson because they did not have reasonable and trustworthy information sufficient to believe that Mr. Gibson had committed the crime.

First, the court notes that initially the police were looking for a white male in connection with this crime. This individual was wanted for questioning. Apparently, he was never found. The Court notes that the physical description of this individual does not match Mr. Gibson's physical description in any way. Second, there is no explanation in the police reports as to why or when the police made a huge leap of concluding that the crime was committed by two individuals rather than one.

Specifically, the court notes that initially the police were looking for one individual, a white male. Thereafter, a fingerprint analysis identified one print, Mr. West's. Therefore, the physical evidence just connected only one individual to the crime, Mr. West. Third, there was no physical evidence to connect Mr. Gibson to the crime. Instead, the physical evidence connected Mr. West, a convicted felon to the crime.

Mr. West's fingerprint was found inside of the cab and eventually, Mr. West admitted that he had the murder weapon. Fourth, the only evidence that the police had against Mr. Gibson came from Mr. West. Mr. West was a convicted felon who had changed his story on at least three occasions who was physically connected. to the crime scene by a fingerprint and by his own admission was in possession of the murder weapon. Mr. Crayton's testimony was merely that he had seen Mr. West and Roland together hours before the crime was committed. Mr. Crayton saw them together at 12:00 Noon and the murder was committed at 9:00 PM.

Mr. Gibson had no criminal convictions, yet, the police were still willing to take Mr. West's word that he was a murderer. Finally, there is no indication that the police even contacted Greyhound to see if the company kept records or logs to indicate when the sale of a ticket from Clarksville, Tennessee to New Orleans took place. They did not even check the bus schedule. Instead, they sat back and waited for Mr. Gibson's family to produce a sub which by time was three months old. Not surprisingly, the sub could not be located.

Considering all of the evidence that was available to the police in March 1968, the court concludes that they did not have probable cause to arrest Mr. Gibson for the armed robbery and murder of Charles Reinecke. The second issue for the court to address is the apportionment of liability. Pursuant to Civil Code Article 2323, the court must assign a percentage of fault to each defendant.

In assigning fault, the court must look at the actions of each defendant. As to Lloyd West, his version of the facts

differs significantly from the facts as set forth in the Supplemental Police Report and Mr. West testified that prior to the crime he had known Mr. Gibson. They had grown up in the same neighborhood and had "hung" out together.

Mr. West also testified that he was beaten and tortured into confessing that he was involved in the armed robbery of Charles Reinecke. He gave graphic testimony of being kicked in the chest and groin, chocked with a rope around his neck, punched, had a pistol stuck in his mouth and was poked with a cattle prod.

Additionally, he testified that in fact the police brought up Mr. Gibson's name and suggested to Mr. West that Mr. Gibson had committed the crime. Mr. West testified that to save his own life, i.e., to stop the beatings and torture and to avoid the electric chair he implicated Mr. Gibson and agreed to testify against him.

The court found Mr. West to be a very credible witness. He described the beatings and torture in great detail and it was apparent that while testifying that he was actually reliving this experience. Furthermore, the Supplemental Police Report indicates that when police were told by Mr. Crayton that he saw Mr. West with an individual "named Roland" who was AWOL, they then learned that Roland Gibson had been reported AWOL on the day of the murder. Therefore, when Mr. West was questioned, the police knew of Roland Gibson.

Several years after implicating Mr. Gibson and testifying against him in criminal trial, Mr. West admitted that

Mr. Gibson was not involved in the crime. Mr. West now maintains that he and an individual named George Carter committed the crime. The court notes that the physical description that Mr. West gave during the trial of this case of Mr. Carter matches the description of the suspect that the police were initially seeking for questioning as a white male, six feet, one inch tall.

As previously noted, it took Mr. West several years to admit the truth. By then, Mr. Gibson had gone through the ordeal of a trial, been convicted of first degree murder and sentenced to life imprisonment and incarcerated for twenty-four years. As to the City's culpability, the court has already found that there was no probable cause to arrest Mr. Gibson.

Considering the law and evidence, the court assesses fault as follows: Lloyd West 10%, the City of New Orleans 90%. The final issue for the court to address is damages. As to Roland Gibson: Mr. Gibson was arrested on March 29, 1968. He was nineteen years old at the time. Pending trial, he was locked up in Parish Prison. In November 1968, he was convicted of first degree murder and sentenced to life imprisonment.

In December 1968, he was transferred to Angola. Mr. Gibson spent many years at Angola and he testified as to what life was like at Angola. Since he was young, he was preyed upon by the older prisoners who sought to sexually abuse him. He was scared and had to fight the other prisoners to protect himself. While at Angola he worked in the fields for three years.

Mr. Gibson was later transferred to Jackson Barracks and in 1975, he got a pass and did not return. He was on the lam for a year. He was re-arrested in 1976 and sent back to Angola. He remained at Angola until April of 1993 when he was released. At the time of his release, Mr Gibson was forty-four years old. He had been incarcerated for twenty-four years, well over one half of his life.

As to how this ordeal affected Mr. Gibson's relationship with his family, Mr. Gibson married Jessie Gibson in 1966. They have two sons, Roland, Jr. born December 1966, and Dennis born November 1967. After Mr. Gibson was arrested, Mrs. Gibson would visit him weekly in Parish Prison. She did not bring the two children because they were too small and she felt that that was not a place for them to be. When Mr. Gibson was transferred to Angola, she and the children would visit once or twice a month.

At one point, Mr. Gibson told Mrs. Gibson he did not want her to visit and they were divorced. Thereafter, the children's grandmother brought them to see their father. In November 1988, Mrs. Gibson resumed her visits. In 1993, Mr. Gibson and Mrs. Jessie Gibson were re-married. They were together on and off for two and a half years. They are now in a trial separation.

Mr. Gibson testified that there are difficulties in the marriage due to his depression, his drinking and his inability to hold a long term job. Mr. Gibson attributes these problems to his incarceration although the court notes that the testimony indicates that he did drink prior to his incarceration.

Dr. Yvonne Osborne, a Clinical Psychologist testified that Mr. Gibson suffers from post-traumatic stress adjustment disorder and alcohol abuse. She testified that Mr. Gibson was having problems adjusting to life outside of prison. This manifests itself as depression, panic attacks, anxiety, anger and frustration. He has flash backs to his time in prison and due to these intrusive memories he has trouble concentrating.

This coupled with the fact that he has only an eighth grade education and no job skills means he has problems keeping a job. Furthermore, Dr. Osborne testified that Mr. Gibson doesn't have the foundation to build upon for re-training.

Robert Johnson, a forensic economist also testified as to Mr. Gibson's past and future loss of income. He noted that prior to his incarceration, Mr. Gibson had received a general discharge from the Army and had worked part-time as a long shoreman. Since his release from prison, Mr. Gibson has only been able to hold odd jobs on a temporary basis. Mr. Johnson concludes that Mr. Gibson's past loss income was $1,038,215 and that his future loss of income was $636,409.00.

Considering the evidence and the testimony, the court awards Mr. Gibson damages as follows: Past and future pain and suffering $5,000,000.00; past loss income $1,038,215.00; future loss of income $636,409.00.

As to Mrs. Jessie Gibson, when Mr. Gibson was incarcerated Mrs. Gibson was left without a husband and with the responsibility of raising two boys on her own. She was forced to be mother and father to their children. Mrs.

Gibson was fortunate to have help from her mother, but to support herself and two children she worked sixteen hour days.

She testified that she still loves Mr. Gibson but that he was too hard to live with. Considering the law and evidence the court awards Jessie Gibson the sum of $3,000,000.00 for her past and future pain and suffering.

As to Roland Gibson, Jr. and Dennis Gibson, Roland Gibson, Jr. was fifteen months old when his father was arrested and incarcerated and Dennis Gibson was only six months old. Their earliest memories of their dad were when he was incarcerated. They recall visiting with their dad once or twice a month and phone calls once or twice a month.

Roland Gibson testified that he had a lot of family responsibility such as cooking and cleaning while their mom worked. They missed sharing birthdays, graduations, and holidays with their dad. Roland, Jr. testified that he grew up with anger. He was angry because the public perceived his father as a convicted killer.

Considering the testimony and the evidence the court awards Roland Gibson, Jr. the sum of $1,000,000.00 for his pain and suffering. Dennis Gibson the court awards the sum of $1,000,000.00 as well. In addition, the plaintiffs are aware court costs and interest from the date of judicial demand.

* * * * *

CERTIFICATE

I, ANGELA M. COLEMAN, do hereby certify that the foregoing pages, contain a true and correct transcript, to the best of my understanding in the matter of Roland Gibson, Et Al vs. The City of New Orleans and Lloyd West, case number 93-2517, Division "A", Civil District Court, Parish of Orleans, State of Louisiana.

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding;

That I am not of counsel, not related to counsel or the parties hereto, and not in anywise interested in the event of this suit.

Angela Marie Coleman
ANGELA MARIE COLEMAN
OFFICIAL COURT REPORTER